



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

File Code: 2360/2820/1580

Date: April 3, 2000

RECEIVED

APR 07 2000

DIVISION OF
OIL, GAS AND MINING

RE: Continuing Section 106 Consultation for the Pines Coal Lease Tract—SUFCO Mine,
Manti-La Sal National Forest, Emery and Sevier Counties, Utah and Development of
Memorandum of Agreement to Treat Potential Adverse Effects

Dear Ms. Gleichman:

Attached is a Draft Memorandum of Agreement regarding treatment of potential adverse effects to historic properties within the SUFCO Mine area. The SUFCO Mine encompasses an approximate 7,100 acre area previously referred to as the Pines Coal Lease Tract.

The Forest has previously consulted with Advisory Council and Utah State Historic Preservation Office regarding the Pines Coal Lease Tract and potential effects to historic properties within the tract area. Specifically, the Forest requested the views of the Council and SHPO regarding leasing of the Pines Coal Lease Tract and application of the coal leasing unsuitability criteria (43 CFR Part 3461.5 (g) (1) to assess potential effects caused by underground mining.

The Forest recommended (reference Forest letter to the Advisory Council dated 8/13/98 and accompanying Cultural Resource Technical Report) that with implementation of mitigation measures outlined in the Cultural Resource Technical Report, the lease area could be considered suitable for leasing. The Advisory Council and the Utah SHPO concurred with these recommendations (reference letter of Advisory Council to Manti-La Sal National Forest Supervisor Janette Kaiser dated 9/22/98). In addition, the Forest consulted with the Uintah-Ouray Tribe regarding potential effects to historic properties; no objections were raised to the proposed leasing action.

With this concurrence, the Forest consented to leasing of the tract through the competitive bid process. A lease has now been issued by the Bureau of Land Management to Canyon Fuel Company, L.L.C.; the tract area is now incorporated within Canyon Fuel's SUFCO Mine. The Forest is now reviewing the SUFCO Mining and Reclamation Plan. Accordingly, to incorporate mitigation measures to protect/treat potentially affected historic properties, the Forest has been consulting with the Utah SHPO, Utah Division of Oil, Gas and Mining (UDOGM) and Canyon Fuel Company to develop a Memorandum of Agreement to implement treatment measures.

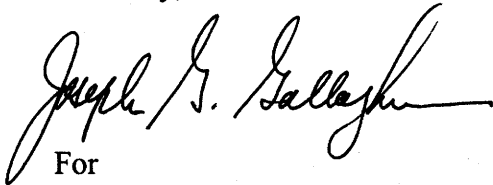
In consultation with the Utah SHPO and other interested parties, we have developed a Draft Memorandum of Agreement stipulating monitoring procedures for several sites and additional consultation for mitigation/treatment should adverse affects be discovered through monitoring.



The Utah SHPO has found the agreement to be acceptable to them. The Forest will be continuing consultation with the Uintah-Ouray Tribe and sending them the draft agreement for review and comment (please reference the letter of Forest Supervisor Janette Kaiser to the Advisory Council dated 1/22/98 providing details on previous tribal correspondence).

We would appreciate your review and comment on the proposed agreement. Please let us know if you would like to see any changes. We can then incorporate these into the document and forward a final agreement to you for signature. If you have any questions, please contact Forest archaeologist Stan McDonald or Forest Geologist Carter Reed for further details at (435) 637-2817. We look forward to hearing from you.

Sincerely,



For
JEFF WALTER
Acting Forest Supervisor

Enclosures:

Draft MOA dated 3/31/00

Utah SHPO letter dated March 6, 2000

cc:

Mike Davis, Canyon Fuel Company

Paul Baker, UDOGM

Jim Dykman, USHPO

Carter Reed, SO

Stan McDonald, SO

Jeff DeFreest, Price-Ferron RD

Crockett Dumas, Price-Ferron RD



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

File Code: 2360/2820/1580

Date: April 3, 2000

Ms. Carol Gleichman
Advisory Council on Historic Preservation
12136 West Bayaud Avenue #330
Lakewood, CO 80226

RE: Continuing Section 106 Consultation for the Pines Coal Lease Tract—SUFCO Mine,
Manti-La Sal National Forest, Emery and Sevier Counties, Utah and Development of
Memorandum of Agreement to Treat Potential Adverse Effects

Dear Ms. Gleichman:

Attached is a Draft Memorandum of Agreement regarding treatment of potential adverse effects to historic properties within the SUFCO Mine area. The SUFCO Mine encompasses an approximate 7,100 acre area previously referred to as the Pines Coal Lease Tract.

The Forest has previously consulted with Advisory Council and Utah State Historic Preservation Office regarding the Pines Coal Lease Tract and potential effects to historic properties within the tract area. Specifically, the Forest requested the views of the Council and SHPO regarding leasing of the Pines Coal Lease Tract and application of the coal leasing unsuitability criteria (43 CFR Part 3461.5 (g) (1) to assess potential effects caused by underground mining.

The Forest recommended (reference Forest letter to the Advisory Council dated 8/13/98 and accompanying Cultural Resource Technical Report) that with implementation of mitigation measures outlined in the Cultural Resource Technical Report, the lease area could be considered suitable for leasing. The Advisory Council and the Utah SHPO concurred with these recommendations (reference letter of Advisory Council to Manti-La Sal National Forest Supervisor Janette Kaiser dated 9/22/98). In addition, the Forest consulted with the Uintah-Ouray Tribe regarding potential effects to historic properties; no objections were raised to the proposed leasing action.

With this concurrence, the Forest consented to leasing of the tract through the competitive bid process. A lease has now been issued by the Bureau of Land Management to Canyon Fuel Company, L.L.C.; the tract area is now incorporated within Canyon Fuel's SUFCO Mine. The Forest is now reviewing the SUFCO Mining and Reclamation Plan. Accordingly, to incorporate mitigation measures to protect/treat potentially affected historic properties, the Forest has been consulting with the Utah SHPO, Utah Division of Oil, Gas and Mining (UDOGM) and Canyon Fuel Company to develop a Memorandum of Agreement to implement treatment measures.

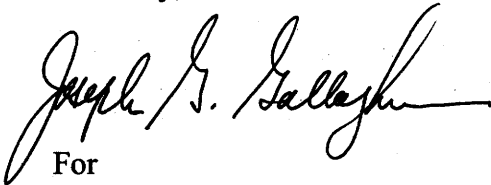
In consultation with the Utah SHPO and other interested parties, we have developed a Draft Memorandum of Agreement stipulating monitoring procedures for several sites and additional consultation for mitigation/treatment should adverse affects be discovered through monitoring.



The Utah SHPO has found the agreement to be acceptable to them. The Forest will be continuing consultation with the Uintah-Ouray Tribe and sending them the draft agreement for review and comment (please reference the letter of Forest Supervisor Janette Kaiser to the Advisory Council dated 1/22/98 providing details on previous tribal correspondence).

We would appreciate your review and comment on the proposed agreement. Please let us know if you would like to see any changes. We can then incorporate these into the document and forward a final agreement to you for signature. If you have any questions, please contact Forest archaeologist Stan McDonald or Forest Geologist Carter Reed for further details at (435) 637-2817. We look forward to hearing from you.

Sincerely,



For
JEFF WALTER
Acting Forest Supervisor

Enclosures:

Draft MOA dated 3/31/00

Utah SHPO letter dated March 6, 2000

cc:

Mike Davis, Canyon Fuel Company

Paul Baker, UDOGM

Jim Dykman, USHPO

Carter Reed, SO

Stan McDonald, SO

Jeff DeFreest, Price-Ferron RD

Crockett Dumas, Price-Ferron RD



State of Utah

Department of Community and Economic Development
Division of State History
Utah State Historical Society



Michael O. Leavitt
Governor
Max J. Evans
Director

300 Rio Grande
Salt Lake City, Utah 84101-1182
(801) 533-3500 FAX: 533-3503 TDD: 533-3502
ushs@history.state.ut.us <http://history.utah.org>

March 6, 2000

Stan McDonald
Manti-La Sal National Forest
599 West Price River Drive
Price UT 84501

RE: SUFCO Mine - MOU for Archaeological Site Monitoring and Treatment

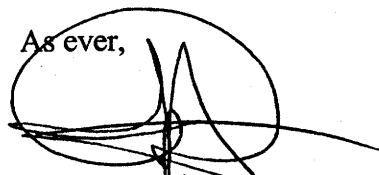
In Reply Please Refer to Case No. 97-1536

Dear Mr. McDonald:

The Utah State Historic Preservation Office received the above referenced information on March 1, 2000. Besides the MOU issue, I see no problems, let's go with the document..

This information is provided on request to assist with Section 106 responsibilities as specified in §36CFR800. If you have questions, please contact me at (801) 533-3555. My email address is: jdykman@history.state.ut.us

As ever,



James L. Dykman
Compliance Archaeologist

JLD:97-1536 FS/MOA/NEW

DRAFT*****DRAFT*****DRAFT*****DRAFT

Version 3: 3/31/00

MEMORANDUM OF AGREEMENT

BETWEEN

**THE USDA- MANTI-LASAL NATIONAL FOREST,
THE UTAH STATE HISTORIC PRESERVATION OFFICER,
CANYON FUEL COMPANY, L.L.C.,
UTAH DIVISION OF OIL, GAS AND MINING
AND**

**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE SUFCO MINE**

Agreement No. _____

WHEREAS, the United States Department of Agriculture-Forest Service, Manti-La Sal National Forest (USDA-FS) as the Federal Agency, charged with administering the surface resources on National Forest System lands for Federal coal leases U-76195 and U-63214 as authorized by the Mineral Leasing Act of 1920, as amended by the Coal Leasing Amendments of 1975 and the Utah Division of Oil, Gas and Mining (UDOGM) is responsible for administration of the SUFCO mine plan under the Surface Mining Control and Reclamation Act of 1977 and the Utah Coal Rules; and

WHEREAS, it is the statutory responsibility of the USDA-FS to ensure consideration of cultural resources as authorized in 36 CFR 800.2(a) and to ensure that the work conducted under this agreement meets professional standards as required by 36 CFR Part 800.2(a)(1); and

WHEREAS, the USDA-FS has determined that its consent to the SUFCO mine plan permit Incidental Boundary Change (Federal coal lease U-63214) and modification (U-76195) (hereinafter referred to as the Project) may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the Advisory Council on Historic Preservation (the Council), and the Utah State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800.14 (b) of the Advisory Council's (the Council) regulations implementing Section of 106 of the National Historic Preservation Act, as amended, [16 U.S.C. Section 470 (f)] and Section 110(f) of the same Act [16 U.S.C. 470 h-2 (f)]; and

WHEREAS, this Agreement covers permitting and administration of the SUFCO Mine (including underground mining activities such as construction of mine entries, gateroads, mechanical mining of longwall panels and ventilation breakout facilities) and mining-induced subsidence of the ground surface on National Forest System lands; and

WHEREAS, unless otherwise defined differently in this Agreement all terms are used in accordance with 36 CFR Part 800.16; and

WHEREAS, the Canyon Fuel Company, LLC (the Permittee) has been invited to participate in consultation and to concur in this Memorandum of Agreement;

WHEREAS, the USDA-FS has consulted with the appropriate Native American Tribes about the project and has invited them to participate and concur in this agreement; and

WHEREAS, the Uintah-Ouray Tribe has expressed an interest in historic properties within the project area;

NOW THEREFORE, the Permittee agrees that the underground mining operations of the Project shall be administered in accordance with the following stipulations to ensure that historic and prehistoric properties will be treated to avoid or mitigate effects to the extent practicable to satisfy the Forest Service, the Council, and the SHPO and that the proposed project (undertaking) shall be administered in accordance with the following stipulations to satisfy Section 106 responsibilities for all aspects of the undertaking.

8. Treatment Plan. If the USDA-FS and SHPO agree that the underground mining has caused adverse effects, the USDA-FS shall ensure that the Permittee's Cultural Resource Consultant prepares a comprehensive Treatment Plan that will address the effects of the proposed undertaking on all historic properties determined to have been adversely affected. The Permittee will be financially responsible for development of the Treatment Plan and costs associated with data recovery, analysis and reporting to implement the Treatment Plan. The Treatment Plan shall identify the nature of the effects to which each property has been subjected and the treatment strategies proposed to minimize or mitigate the effects of the undertaking. The Treatment Plan shall meet the standards contained in Attachment A, "Standards for the Treatment Plan." The USDA-FS shall submit the Treatment Plan to the SHPO, the Council, other parties to this Agreement, and to identified interested parties (pursuant to the 1992 amendments to the Act) for review. The SHPO, the Council, and other parties will have 30 calendar days from receipt to comment on the Treatment Plan. If the SHPO, the Council, or other parties fail to submit their written comments within 30 calendar days of receipt, the USDA-FS shall implement the Treatment Plan. If the SHPO, the Council, or other parties object in writing to the Treatment Plan or any part thereof, within the review period, the USDA-FS will consult with the objecting party to resolve the objection.

If it is determined that more than one site has been adversely affected by underground mining activities and more than one site will require data recovery measures to mitigate adverse effects, a single, comprehensive research design and Treatment Plan is envisioned for this project through coordination by the Permittee's cultural resource consultant. The research design should reflect the site-specific character of the each site (age, cultural affiliation, site function) and the proposed treatment plan should take into account site-specific effects from underground mining. Though general research questions to be addressed through data recovery will be similar for sites in the area, the research design and treatment plan(s) should reflect the unique character and information potential of each affected historic property. Individual treatment plans may be submitted to the USDA-FS and SHPO for review and consideration. However, these site specific treatments, if required by circumstances, will be incorporated into the comprehensive Treatment Plan to follow. Review times for these specific treatments will be the same as the comprehensive Treatment Plan, above, although the USDA-FS may request expedited review.

9. The Permittee shall be responsible for protecting the cultural property during data recovery operations should data recovery actions be implemented. The Permittee shall also set forth written assurances that funding for fieldwork, analyses, and publication of results shall be made available for sites where data recovery and monitoring is enacted.

10. Curation of Specimens and records. The USDA-FS shall ensure that all records and materials resulting from identification and data recovery efforts are maintained and curated in accordance with 36 CFR 79. All costs of curation will be borne by the Permittee. With the exception of materials that may be repatriated in accordance with the provisions of the Native American Graves Protection Act of 1990 (NAGPRA), collections to be curated will be housed at the College of Eastern Utah Prehistoric Museum. The Permittee's cultural resource consultant will be required to acquire a valid curation agreement with the Museum prior to commencing data recovery operations.

11. Discovery Situations. The Permittee or cultural resource consultant employed by the Permittee shall bring to the attention of the Manti-La Sal National Forest Supervisor's Office any and all antiquities, or other objects of historic, paleontological, or scientific interest including, but not limited to, historic or prehistoric ruins or artifacts discovered as a result of this undertaking.

The Permittee's cultural resource consultant shall document the site on appropriate Intermountain Antiquities System Site (IMACS) records, photographs and detailed site maps showing site features, diagnostic artifacts, tools and natural features to facilitate relocating the site. Maps will show these features to within 10% accuracy. A permanent rebar datum (½" diameter, 3' length is the desired standard) will be established on the site and indicated on the site map to permit easy relocation of the discovery/feature. This datum point will be left in place.

The Permittee's cultural resource specialist will evaluate the site for its National Register eligibility and assess potential effects from underground mining. These findings shall be submitted to the USDA-FS. The USDA-FS will review these findings and forward its determination of eligibility and effect to the SHPO for review and comment. If the site is evaluated as significant and will be adversely affected by underground mining, a treatment plan will be developed in consultation with the USDA-FS and previously identified interested parties and tribes and the SHPO.

21. Pursuant to Section 22, Title 41, United States Code, no member of, or Delegate to, Congress shall be admitted to any share or part of this instrument, or any benefits that may arise therefrom.

22. This instrument is executed as of the last date shown below and expires on April 30, 2005, at which time it is subject to review, renewal, or expiration.

23. The principal contacts for this instrument are:

Paul Baker
Utah Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, UT 84114
(801) 538-5261

Mike Davis
Canyon Fuel Company, L.L.C.
397 South 800 West
Salina, UT 84654
(435) 286-4421

Stan McDonald
Manti-La Sal National Forest
599 West Price River Drive
Price, UT 84501
(435) 637-2817

James Dykman
Utah State Historic Preservation Office
300 Rio Grande
Salt Lake City, UT 84101-1182
(801) 533-3555

Carol Gleichman
Advisory Council on Historic Preservation
12136 West Bayaud Avenue
Suite 330
Lakewood, CO 80228
(303) 969-5110

24. This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

25. Modifications within the scope of this instrument shall be made by the issuance of an executed modification agreed to by all signatories prior to any changes being performed.

ATTACHMENT A
STANDARDS AND GUIDELINES FOR MONITORING,
MONITORING REPORTS, TREATMENT AND PERMITS

I. Standards for Monitoring and Monitoring Reports:

Standards for Monitoring

The Permittee's consultant shall submit a plan to monitor sites at the required monitoring frequencies for sites outlined in Attachment B. Monitoring will be implemented at the agreed upon intervals (see Attachment B) and continue through the conclusion of the liability period for the mine plan and/or subsidence is determined by the USDA-FS to be complete. The monitoring plan shall be developed in accordance with the procedures outlined in Item #4 of this agreement, stipulations listed below and the Standard for Monitoring Reports.

Standards for Annual Monitoring Reports.

A. Annual Monitoring Report: The Annual Monitoring Report is to be a brief report displaying:

- 1) Brief Description of the Project and Rationale for Monitoring.
- 2) Brief Description of Sites Monitored.
- 3) Monitoring Methods.
- 4) Monitoring frequency.
- 5) Monitoring observations for each site displaying monitoring criteria and results, photographs of each site.
- 6) Monitoring records will be attached as an Appendix.
- 7) Summary of Monitoring results including observed effects or unchanged situations.
- 8) Conclusions and recommendations, changes to the monitoring plan or for remedial actions.

B. Standards for Final Monitoring Report

At the conclusion of all monitoring (estimated to occur approximately three years subsequent to the completion of all subsidence at all sites, see Attachment B for further discussion on monitoring schedules) the Permittee's consultant shall submit a Final Cultural Resource Monitoring Report. The Cultural Resource Monitoring Report should include the following information:

1) Introduction

a. Description of the Project Area

b. Description of the proposed undertaking, background information on previous environmental analysis, Section 106-NHPA compliance required for the coal leasing project and administration of the Mine Plan, a brief discussion of anticipated effects to cultural resources from underground mining, and the rationale for implementation of the monitoring program.

c. Locational information on 7.5 minute USGS Topographical Quadrangle including name, Section and Township/Range, land status (BLM, Forest Service, etc.), and county.

d. USGS map (1:24000 scale) showing location and boundaries of project area. Map should be clearly labeled and of reproducible quality.

e. Discussion of all sites monitored including site description, location, size, age, function, identified features and artifacts, and middens. A USGS map (1:24000 scale) showing the location of all monitored sites shall be included displaying Forest and Smithsonian Site numbers. Photographs of all monitored sites should be included in this section.

6) Appendices

- a. Monitoring records. Copies of monitoring records and data recording sheets, photographs and maps.
- b. Updated site records to document changes to site character observed during monitoring.

C. The time frames for submitting reports are as follows:

1. Annual Report:

Draft Annual report of monitoring results: January 15

Forest Service review comments (and addressing comments of UDOGM): February 15

Revision and Final Annual Report: March 15

2. Final Monitoring Report

Draft of Final Monitoring Report: 6 months following the conclusion of the permit.

Forest Service Review comments: 30 days after receipt of the draft final report.

Revision and submission of final report: 30 days after USDA-FS comments.

D. Number of report copies and submission. Two copies of the annual reports and final report will be submitted to the USDA-Forest Service. Distribution will be coordinated through the USDA-Forest Service and the Permittee's Cultural Resource Consultant. Except as noted below, each party to this agreement will be provided with copies of the draft and final annual report and drafts and final copies of the final comprehensive report. Draft report copies will be submitted to the parties in this agreement by Canyon Fuel Company. Draft copies of reports will not be submitted to SHPO. Final copies will be submitted to SHPO and such submission will be coordinated through the USDA-Forest Service and the Permittee's Cultural Resource Consultant. The report shall meet the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44728-44738), (Secretary's Standards), and following the aforementioned outline for the Monitoring Reports. The Permittee's consultant will also provide the USDA-Forest Service with one unbound, camera ready, single spaced text with original archivally processed photographic plates of this report.

II. Guidelines for Treatment

A. General

- 1) The Treatment Plan will conform to the Secretary's Standards. Treatment recommendations should be commensurate with the nature and significance of the involved cultural resources. Recommendations should consider a range of alternative treatments including protection measures and data recovery.

B. Standards for the Treatment Plan.

- 1) The Data Recovery Plan shall conform to the Secretary's Standards and should provide the context and justification for, and a detailed description of, the proposed data recovery work.

2) Protection Measures

- a. Recommendations for physical or administrative protection measures must consider the nature and source of deterioration of the properties.

- b. If long term physical or administrative protection measures are recommended, proposals must include justification and undertaking specifications.

3) The Treatment Plan shall include at a minimum:

- a. The properties or portions of properties where data recovery is to be carried out;

Permittee's Cultural Resource Consultant. The number of copies to be produced will be determined by Forest Service in coordination with the Cultural Resource Consultant. At a minimum, copies of the report will be made available to the Council, the SHPO, the Forest Service, the Permittee, reviewing agencies, and all interested parties.

3) The Permittee's Cultural Resource Consultant will provide the Forest Service with one unbound, camera ready, single spaced text with archivally processed photographic plates of the final data recovery report.

III. Standards for Permits

A. General Standards

1) Each cultural resource contractor performing work on National Forest System lands must have cultural resources permits issued by the appropriate authority. These include, but may not be limited to, inventory and excavation permits issued by the Forest Service, state and local permits as required.